

# HAWAI'I BUSINESS SALES

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## Aloha Prospective Hawaii Business Buyer

Thanks for requesting information about our Clients' businesses for sale. Our Clients require that we have a signed **Non-Disclosure / Confidentiality Agreement ("NDA")** and **Buyer Information & Financial Statement ("BFS")** from buyers before divulging any Confidential Information about their businesses.

### Comments and Instructions

1. This is a legally binding agreement which will cover any business opportunities for which HBS discloses its Client to Buyer, and about whom any Confidential Information (as defined herein) has been shared with Buyer. **This Agreement will be effective for one year from the Effective Date.**
2. Sorry, but we cannot respond with any Confidential Information unless this form is completely filled out.
3. You can either: (i) print and fill out this form and then return it to us by email or fax, or (ii) you can take advantage of its writable PDF capability by filling in the highlighted boxes (including the signature and date boxes) saving the form to your computer and then emailing it to us.
4. If you write on the form, please write legibly.
5. If you are signing as an individual write in your name. If you are signing for a legal entity (like a corporation, etc.), please include your name, the name of the company and your company title.
6. Please provide all the requested financial information on the attached Financial Statement.
7. If you do not wish to provide full financial details on the attached Financial Statement, then write in the comments section **"I certify that my Liquid Net Worth is more than \$[insert dollar amount].** Please read and use our definition of Liquid Net Worth. Our Client will decide if this certification is sufficient to release their confidential information.
8. Please use the Buyer Information form to tell us about yourself.
9. As information, bank financing is often difficult to obtain for the purchase of a business. Unlike buying a home (when you can make a 10% to 20% down payment) most banks require at least a 30% to 50% down payment to buy a business; and that is if they believe both the business and the borrower are creditworthy.
10. **Be prepared to substantiate your stated liquid net worth to us during the due diligence process after a purchase agreement is reached.**
11. Please initial the bottom of all pages, sign and date all signature boxes and return ALL PAGES, by fax or email, except this instruction page, to 1-866-655-1761, or scan and email to [HawaiiBusinessSales@gmail.com](mailto:HawaiiBusinessSales@gmail.com) and keep a copy for yourself.

**We will maintain the confidentiality of your information and provide it only to our Client, the seller of the Business you have expressed an interest in.**

# HAWAII BUSINESS SALES

## NON-DISCLOSURE / CONFIDENTIALITY AGREEMENT (the "Agreement")

### Multi-Client

This Agreement dated and effective as of the latest date below (the "**Effective Date**") between Jansson Enterprises, LLC, a Hawaii limited liability company, doing business as Hawaii Business Sales (the "**Intermediary**" or "**HBS**"), HBS's Clients and

**Buyer's Name:** \_\_\_\_\_

**Title** \_\_\_\_\_ (if applicable)

**Company's Name** \_\_\_\_\_ (if applicable)

its agents, assigns and direct family members (individually and together the "**Buyer**" or "**Recipient**") with the following contact information:

**Address** \_\_\_\_\_ **City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip** \_\_\_\_\_ **Country** \_\_\_\_\_

**Email Address** \_\_\_\_\_

**Phone 1** \_\_\_\_\_ **Phone 2** \_\_\_\_\_ **Fax** \_\_\_\_\_

Buyer desires to obtain certain confidential and proprietary information about one or more of HBS's Client's business(es) ("**Business**") so Buyer may make a decision regarding an offer to purchase such business ("**Transaction**"). "**Client**" is defined as any client of HBS whose identify has been disclosed to Buyer and about whom any Confidential Information, as defined herein, has been shared with Buyer at any time.

Buyer acknowledges that HBS: (i) is acting as the advisor to and agent for the Client selling the Business ("**Seller**" or "**Discloser**"), (ii) has a fiduciary duty only to the Seller, (iii) HBS will be Buyer's exclusive point of contact on this matter, and (iv) HBS has no duty to or fiduciary relationship with Buyer. HBS is authorized by the Seller(s) to enter into this Confidentiality and Non-Disclosure Agreement ("**Agreement**") on its/their behalf.

Buyer, as detailed above, Seller(s) and HBS may be referred to herein collectively as "**Parties**" and each individually as "**Party**." In consideration of Buyer being granted the opportunity to review Confidential Information, Buyer agrees to receive and treat Confidential Information on a confidential and restricted basis and agrees as follows:

- Purpose:** Buyer agrees its review of Confidential Information must be only to determine whether to purchase Business and for no other purpose. Buyer agrees never to use Confidential Information in any way to compete directly or indirectly with Business, or to interfere with or harm Business or in its own business or operations.
- Definition of "Confidential Information".** As used in this Agreement, the term "**Confidential Information**" means all information that is furnished to Recipient or its Representatives, defined below, by or on behalf of Discloser(s) which concerns the Transaction or the Business, whether furnished or otherwise disclosed on or after the date of this Agreement, **including the fact that the Business is for sale**. Any information furnished to Recipient or its Representatives by a director, officer, employee, affiliate, equity holder, partner, co-venturer, consultant, contractor, advisor, agent or representative of Discloser will be deemed furnished by Discloser for purposes of this Agreement. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this Agreement: (a) information which is or becomes generally available to the public other than as a result of a disclosure by Recipient or its Representatives in violation of this Agreement; (b) information which was already known to Recipient or its Representatives prior to being furnished to Recipient by Discloser or its Representatives; and (c) information which becomes available to Recipient or its Representatives from a source other than Discloser or its Representatives if, at the time of subsequent disclosure by Recipient, Recipient did not know or have reason to believe that such source either was subject to a prohibition against transmitting the information to Recipient or was bound by a confidentiality agreement with Discloser with respect to such information.
- Non-Disclosure.** Buyer agrees that Confidential Information, always: (a) must be kept in strict confidence by Buyer and its Representatives, and be protected by Buyer and its Representatives, (b) must not be used by Buyer to the detriment of Business or for Buyer's gain through competition with Seller, and (c) must not be used by or transferred, sold, or disclosed to any third party, except that Buyer may disclose Confidential Information to Representative(s). This Section 3 is intended for the benefit of the owner(s) of Business ("**Seller**"), and the Parties intend Seller to be a third-party beneficiary of this Agreement. As such intended third party beneficiary, Seller may sue Buyer to enforce the terms

of this Agreement or to recover damages for breach of this Agreement. If Buyer breaches any of the covenants and agreements contained herein, then Seller or HBS will have the right to commence legal proceedings and will have the right, in addition to any action for damages, to seek specific performance (including injunctive relief) of the covenants and agreements contained in this Agreement, without the requirement of posting a bond. In any equitable action, the prevailing Party will be entitled to collect its court costs and reasonable attorney fees. The covenants and agreements contained in Section 3 will remain in effect following the termination or expiration of this Agreement.

4. **Representative(s):** Buyer agrees that Confidential Information may be disclosed to Buyer's spouse, co-investors, accountants, attorneys, or other professional advisors (collectively "**Representatives**" and each a "**Representative**") for the limited purpose of Representatives' review of such information, but only if such Representatives reasonably require access to the Confidential Information in connection with the Purpose described above. Buyer shall, prior to any such disclosure, inform its Representatives of the terms of this Agreement, including the confidential nature of the Confidential Information and the requirement that Representatives comply with the provisions of confidentiality and non-disclosure contained in this Agreement and not use Confidential Information other than for the limited Purpose described above. If Buyer discloses Confidential Information to a Representative, then Buyer assumes full legal responsibility if that Representative breaches those requirements, just as if Buyer itself had breached those requirements. Furthermore, Buyer agree that in performing due diligence of the Business, that Buyer and Buyer's Representatives shall not disclose to any third party any Confidential Information, including the identity of the Company, (1) unless such third party agrees to be bound by the terms and conditions contained herein; (2) that such disclosure is pre-approved in writing by Seller or HBS, and (3) Buyer agrees to be held fully responsible for any breach of this agreement by such third party, unless such third party has executed a separate or joint confidentiality agreement with HBS.
5. **Non-Circumvention.** For two (2) years from the date of this Agreement, Buyer irrevocably agrees not to circumvent or bypass HBS, or communicate or negotiate with Business (including without limitation Business's owners, members, officers, directors, managers, landlords, and employees), without HBS's prior written consent. Buyer further agrees that, as a condition of receiving Confidential Information from HBS and Discloser: (a) HBS is the exclusive intermediary that introduced Business to Buyer; (b) Buyer shall conduct all further inquiries into Business exclusively through HBS; (c) Buyer must present any offer to purchase or acquire an interest or invest in Business by any means through HBS; (d) Buyer agrees to present any offers to purchase Business on HBS's forms, for example HBS's "Offer to Purchase / Asset Purchase Agreement"; and, (e) Buyer agrees that a licensed escrow company or closing attorney shall be engaged to manage the closing of any sale of Business. If Buyer breaches this Section 5, and Buyer's breach results in Buyer acquiring any type or degree of ownership in Business (whether wholly or partly, legally or beneficially, directly or indirectly), or results in any part of the Business or any Business's assets being transferred to Buyer by any means (including without limitation sale, merger, reorganization, combination, share exchange, joint venture/partnership, lease, purchase of securities, exchange, or acquisition), then Buyer agrees to pay HBS its transaction fee (as defined in HBS's representation agreement with Client) immediately, if such fee has not been paid by Seller.
6. **Notice Preceding Compelled Disclosure.** If Recipient or its Representatives are requested or required by applicable law, regulation or legal process (including by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, Recipient shall, to the extent permitted by law, promptly notify Discloser and HBS of such request or requirement so that Discloser may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, Recipient or its Representatives are, in the reasonable opinion of legal counsel, legally required to disclose the Confidential Information, Recipient and its Representatives may disclose only such of the Confidential Information to the party compelling disclosure as is legally required and, in connection with such required disclosure, Recipient and its Representatives shall use reasonable efforts to obtain from the party to whom disclosure is made written assurance that confidential treatment will be accorded to such portion of the Confidential Information as is disclosed.
7. **Access to Properties, Etc.** Buyer and its Representatives understand and acknowledge that Buyer or its Representatives is/are not entitled, by virtue of the execution of this Agreement, physical access to any of the Business's properties, customers, employees, suppliers or other business affiliates. To gain such access, Recipient will require the advance written approval of Seller or HBS and may be required to execute a separate agreement providing specifically for such access.
8. **Non-Solicitation/Non-Interference.** In consideration of the Confidential Information being furnished to Recipient and its Representatives, Buyer and its Representatives agree not to solicit for employment any Company officers, directors or senior-level employees to whom Buyer or its Representatives may be introduced or with whom Buyer or its Representatives otherwise had contact as a result of Buyer's consideration of a Transaction for a period of two (2) years after the date of this agreement, provided that Buyer shall not be restricted from: (a) performing a general solicitation for employees not specifically directed at such persons, and provided further that Buyer shall not be restricted in hiring any such person who responds to such general solicitation, (b) employing or otherwise working with any such person who contacts Buyer solely on his or her own initiative without any direct or indirect solicitation by or encouragement

from Buyer, or (c) soliciting any person whose employment with the Company has been terminated for more than three (3) months. In addition, Buyer shall not use any Confidential Information to interfere with any business relationship between Business and its customers, financial providers, suppliers and any material third parties.

9. **No Representations.** Recipient(s) understands, acknowledges and agrees that neither Discloser nor any of its affiliates (collectively, the “**Discloser Companies**”) nor any of their respective representatives, nor HBS make any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information, and shall not have any liability to Recipient or to any of its Representatives relating to or resulting from the use of the Confidential Information, or any errors therein or omissions therefrom. Only those representations and warranties that are made in a final definitive purchase agreement regarding any Transaction contemplated thereby, when, as and if executed and subject to such limitations and restrictions as may be specified therein, will have any legal effect. Buyer understands, acknowledges, and accepts that: (a) Seller, not HBS, provides all information regarding Business, and (b) such information is not verified and will not be verified in any way by HBS. HBS has no knowledge of the accuracy or completeness of any information provided to Buyer, and HBS makes no representation, promise, or warranty, express or implied, as to the accuracy or completeness of any such information. Buyer acknowledges that buying a Business involves risk. Buyer accepts sole responsibility for Buyer’s decision to buy Business, and Buyer agrees to rely solely on Buyer’s own independent investigation of Business. HBS advises Buyer to seek independent legal, accounting, tax and other professional advice, as needed, before making a purchase decision or executing a Transaction. Buyer acknowledges that HBS does not provide legal, accounting or tax advice. Therefore, Buyer shall be responsible for making an independent verification of any information before entering into an agreement with Seller to purchase Business. Buyer agrees to indemnify, defend, and hold HBS and its agents harmless for any claims or damages that may occur because of the inaccuracy or incompleteness of any information provided to Buyer with respect to Business, and to include contract provisions, provided by HBS, to indemnify HBS in any offer to purchase Business. In the event of any judgment, award, or arbitration decision resulting from such claims, Buyer agrees that the maximum liability of HBS and its agents shall be limited to the amount of the net commission that HBS received as a result of Buyer purchasing Business from Seller.
10. **Hold Harmless.** Recipient shall reimburse Discloser for its actual damages, losses and including costs and reasonable attorney’s fees in connection with investigation and enforcement of this Agreement, arising out of any breach or non-fulfillment of any term or condition of this Agreement by Recipient or by Recipient’s Representatives as determined by a court of competent jurisdiction in a final non-appealable judgment.
11. **Entire Agreement.** This Agreement embodies the entire agreement between the Parties concerning the subject matter hereof, and it must be deemed a fully integrated contract between them. This Agreement supersedes all prior and contemporaneous agreements, representations, and undertakings by or between the Parties, if any. No provision of this Agreement may be amended, changed, waived, discharged or terminated except by an instrument in writing signed by the Party against whom enforcement of the amendment, change, waiver, discharge, or termination is sought.
12. **Severability.** If any part of this Agreement is void, voidable, invalid, or unenforceable, for any reason, then this Agreement will then be considered divisible as to such part with the remainder of the Agreement remaining as valid and binding as though such part were not included in this Agreement.
13. **Governing Law.** This Agreement was made (and will be deemed to have been made) in the State of Hawaii, and the validity of this Agreement, and the construction, interpretation, and enforcement thereof, and the rights of the parties thereto must be determined under, governed by, and construed in accordance with the internal laws of the State of Hawaii, without regard to conflicts of law rules of the state in which suit is initiated pertaining to this Agreement.
14. **No Waiver; Remedies.** No failure or delay in exercising any right, power, or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder. Recipient acknowledges and agrees that money damages may not be a sufficient remedy for any breach of this Agreement by Recipient or any of its Representatives and Discloser will be entitled to seek specific performance and injunctive relief as remedies for any such breach. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement by Recipient or any of its Representatives but will be in addition to all other remedies available at law or in equity to Discloser.
15. **Buyer’s Representations and Warranty.** The Buyer hereby represents and warrants: (i) the financial information provided in the attached Buyer Information and Financial Statement, attached hereto, and any other information provided by Buyer, which is material to a Transaction, is complete and accurate as of the date furnished; and, that prior to acceptance by Seller of Buyer’s offer to purchase Business, Buyer shall provide evidence proving financial sufficiency to complete a Transaction; (ii) there are no actions, claims, proceedings, tax or other liens, suits, or investigations pending or, to the best of Buyer’s knowledge, threatened against or relating to Buyer by or before any court or governmental body that reasonably could be expected to prevent Buyer from performing its obligations under a Transaction; and, (iii) Buyer knows of no family, personal, financial or any other issues which will prevent Buyer from closing a purchase Transaction.
16. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be

an original, and all of which together shall constitute one and the same instrument.

- 17. **Facsimile/Electronic Signatures.** Signatures by facsimile or other similar electronic means shall be treated the same as original signatures and shall be fully binding and effective for all purposes.
- 18. **Term.** The restrictions on the use and disclosure of the Confidential Information contained in this this Agreement shall terminate two (2) years after the Effective Date of this Agreement; provided, however, the termination of such restrictions shall not limit any cause of action or claim arising from Recipient's breach of or failure to perform any duty or obligation under this Agreement prior to such termination. **This Agreement may be used only for a period of one year from the Effective Date to obtain Business information. Beyond one year, an updated Agreement will be required.**
- 19. **Offering of Securities.** Buyer acknowledges that HBS is not licensed as a securities broker or dealer by any state or federal government agency and that any contemplated transaction will be conducted as a sale and purchase of tangible and intangible assets using an Asset Purchase Agreement and not the sale of any securities or interest in any legal entity.
- 20. **Buyer's Financial Statement.** The "Buyer's Information Statement and Financial Statement" is attached hereto and made a part hereof. During the term of this Agreement, if the Buyer's financial situation as represented by the attached Buyer's Financial Statement has any material reduction in net worth or liquid net worth Buyer shall promptly provide HBS an updated written Financial Statement.

**Buyer hereby requests information about the following HBS Client or Clients: [please type in]**

**AGREED TO BY: "BUYER" / "RECIPIENT"**

**Buyer's Name:** \_\_\_\_\_

**Buyer's Signature:** \_\_\_\_\_

**Effective Date:** \_\_\_\_\_

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**If you are an Advisor or Representative to named Buyer, please complete and sign the following:**

Name \_\_\_\_\_ Title \_\_\_\_\_

Company Name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Country \_\_\_\_\_

Email Address: \_\_\_\_\_ Phone \_\_\_\_\_

Your role \_\_\_\_\_

**AGREED TO BY BUYER'S REPRESENTATIVE**

**Representative's Signature:** \_\_\_\_\_

**Effective Date:** \_\_\_\_\_

**Representatives need not fill out the Buyer Information & Financial Statement**

**BUYER INFORMATION & FINANCIAL STATEMENT**

Buyer's Name: \_\_\_\_\_

We ask for this information to ensure our Client that we will be releasing their Confidential Business Profile to only prospective buyers who have the necessary financial capability to finalize a purchase transaction.

ASSETS	US DOLLARS	LIABILITIES	US DOLLARS
Cash		Mortgage on Home	
Stocks/Bonds		2 <sup>nd</sup> Mortgage on Home	
Home		Other Real Estate Loans	
Other Real Estate		Automobile Loans	
Cash Value of Life Insurance		Notes Payable	
Automobiles		Taxes Due	
Retirement Funds available for Business Purchase*		Credit Card Balances	
Other Assets		Other Liabilities	
<b>Total Assets</b>		<b>Total Liabilities</b>	
<b>Total Net Worth (Total Assets minus Total Liabilities)</b>			
<b>Liquid Net Worth (defined as assets which can be converted into cash within 60 days)</b>			

\*Some retirements assets, may be used to fund business purchases, but many may not.

Comments:

What is your current employment? \_\_\_\_\_

Your Current Annual Income: \_\_\_\_\_

What Annual Income will you need to be provided by the Business? \_\_\_\_\_

How much will you have available for a cash down payment? \_\_\_\_\_

When will this cash down payment money be available? \_\_\_\_\_

Who will be involved in the Business purchase decision? \_\_\_\_\_

Will you be an owner-operator of the Business or an Investor who will hire an operator? \_\_\_\_\_

*The undersigned Buyer certifies and acknowledges that: (i) the personal and financial information provided herein by him or her is correct to the best of his or her knowledge, as of the date shown below, (ii) that during the term of this Agreement, if Buyer's financial situation as represented by this Financial Statement has any material reduction in net worth or liquid net worth, Buyer shall provide HBS an updated Financial Statement., and (iii) Buyer shall be prepared to substantiate Buyer's stated liquid net worth to HBS and Seller during the due diligence process after a purchase agreement is reached.*

Sign: \_\_\_\_\_

“Buyer” / “Recipient”

Effective Date

Return ALL signed and initialed pages to: Fax 1-866-655-1761 or [HawaiiBusinessSales@gmail.com](mailto:HawaiiBusinessSales@gmail.com)

**This Financial Statement shall be effective for one year from Effective Date.**